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REMARKS

The Examiner has rejected Claims 1-4, 18-22, 36 and 39 under 35 U.S.C. 103(a) as being unpatentable over Shostack et al. (U.S. Patent No. 6,298,445) in view of Fujimori (U.S. Patent No. 6,681,213). Applicant respectfully disagrees with such rejection for the reasons stated below.

With respect to independent Claims 1, 18 and 36, the Examiner has relied on the following excerpt from Fujimori to make a prior art showing of applicant's claimed "determining whether the risk assessment scan involves an intermediate device coupled between the target and the remote source."

"Each of the authorized nodes has a normal mode and a protected mode for its data input/output operation. On a communication network constituted only by authorized nodes, each of the nodes is allowed to freely input and output (communicate) data in the normal mode. The monitor node, which is also connected to the communication network, detects when an unauthorized node is connected to the network, and then instructs each of the authorized nodes to input and output data in the protected mode." (Col. 2, lines 1-9)

The Examiner further argues that Fujimori discloses "detecting an unauthorized node coupled between the authorized node and the monitor node." Applicant respectfully disagrees with this assertion. It appears that the Examiner is relying on Fujimori's unauthorized node to meet applicant's claimed "intermediate node." However, in doing so, Fujimori simply does not meet applicant's claimed "determining whether the risk assessment scan involves an intermediate device coupled between the target and the remote source" (emphasis added).

Specifically, Fujimori's authorized node and monitor node do not meet applicant's claimed target and remote source, as the authorized node is not the target of the risk assessment scan in Fujimori. The only interaction between the monitor mode and the authorized node is the passing of instructions, which does not meet risk assessment scanning of the target. It appears that this paramount discrepancy is rooted in the fact

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that Fujimori scans for and detects just unauthorized nodes, while applicant claims risk assessment scanning the target, and carrying out additional operations based on the presence of an intermediate device.

Further, the Examiner has relied on the following excerpt from Shostack to make a prior art showing of applicant's claimed "notifying an administrator if it is determined that the risk assessment scan involves the intermediate device."

"A first application 48 of the NSD 16 provides a real-time intrusion detection notification system. In one embodiment, the first application 48 takes an action which may include sending an alarm to a system administrator if an intrusion is detected." (emphasis added - Col. 6, lines 53-56)

Shostack's teaching of "sending an alarm to a system administrator if an intrusion is detected" as emphasized in the excerpt above is significantly different from applicant's claim language. In particular, applicant claims "notifying an administrator if it is determined that the risk assessment scan involves the intermediate device" and NOT simply if an intrusion is detected. There is simply no suggestion in Shostack of any sort of determination as to whether a risk assessment scan involves an intermediate device, let alone a notification thereof.

It is further noted that the Examiner has not specifically addressed applicant's claimed "wherein additional operations are carried out to improve a risk assessment in view of the presence of the intermediate device coupled between the target and the remote source" (see this or similar subject matter in each of the aforementioned independent claims).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined)

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must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite the foregoing paramount distinctions and in the spirit of expediting the prosecution of the present application, applicant has clarified each of the independent claims to further distinguish the prior art of record. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

In addition, the prior art is further deficient with respect to the dependent claims. For example, with respect to dependent Claim 3 et al., the Examiner relies on Fujimori's teaching of a "monitor node" that "detects when an unauthorized node is connected to the network" (see except of Col. 2, lines 1-9 above) to make a prior art showing of applicant's claimed "wherein a plurality of procedures are utilized to determine whether the risk assessment scan involves the intermediate device." Applicant respectfully asserts that the Examiner's reliance the above mentioned excerpt from Fujimori fails to even suggest applicant's claimed "a plurality of procedures [that] are utilized to determine whether the risk assessment scan involves the intermediate device," since Fujimori generally mentions solely a detection of an unauthorized nodes.

Also, with respect to dependent Claim 4 et al., the Examiner relies on Shostack's disclosed "third application 44 [that] provides a map of all ports on the network 20 and pings all Internet Protocol devices to expose potential security vulnerabilities" (emphasis added - Col. 7, lines 17-19) to make a prior art showing of applicant's claimed "wherein at least one of the procedures includes determining a port list associated with the risk assessment scan." Applicant respectfully asserts that the above excerpt does not teach

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"determining a port list associated with the risk assessment scan," since Shostack clearly discloses providing a map of ALL ports on the network, as opposed to those specifically associated with the risk assessment scan.

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

The Examiner has rejected Claims 5-9, 23-27 and 37-38 under 35 U.S.C. 103(a) as being unpatentable over Shostack in view of Fujimori and Applicant Admitted Prior Art (AAPA). Applicant respectfully disagrees with such rejection.

With respect to independent Claims 37 and 38, applicant respectfully asserts that such claims are deemed allowable for, at least in part, the reasons set forth hereinabove with respect to the aforementioned independent claims. It should be further noted that the present claims further distinguish Fujimori by requiring a "proxy server" instead of an "intermediate device," a feature clearly absent in such reference. Also, applicant's following claim language (or substantially similar claim language as in Claim 38) is simply not met by the prior art references:

"executing a plurality of procedures to determine whether the risk assessment scan involves a proxy server coupled between the target and the remote source;"

"receiving results of the risk assessment scan from the target utilizing the network;" and

"notifying an administrator if the results of the risk assessment scan are flagged."

Again, applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. A notice of allowance

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or a specific prior art showing of all of applicant's claim limitations, in combination with the remaining claim elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P012/01.132.01).

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